

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKMARK A SMITH

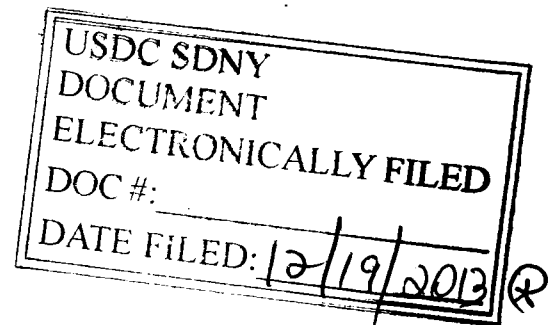
(In the space above enter the full name(s) of the plaintiff(s).)

-against-

THE CITY OF NEW YORK  
LEONARDO NIMO, shield # 5772

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

THIRD AMENDED

COMPLAINT  
12 CV 4890 (LGS)Jury Trial: ☒ Yes ☐ No  
(check one)**I. Parties in this complaint:**

- A. List your name, address and telephone number. If you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff

Name

MARK A. SMITH

Street Address

223 TEN Eyck WALK, 1A

County, City

BROOKLYN

State &amp; Zip Code

NEW YORK 11206

Telephone Number

347-981-5266

- B. List all defendants. You should state the full name of the defendant, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1

Name

THE CITY OF NEW YORK

Street Address

County, City \_\_\_\_\_

State &amp; Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

Defendant No. 2

Name LEONARDO NIMO, Shield # 5772Street Address 230 E. 21<sup>st</sup> StreetCounty, City NEW YORKState & Zip Code NEW YORK 10021

Telephone Number \_\_\_\_\_

Defendant No. 3

Name \_\_\_\_\_

Street Address \_\_\_\_\_

County, City \_\_\_\_\_

State &amp; Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

Defendant No. 4

Name \_\_\_\_\_

Street Address \_\_\_\_\_

County, City \_\_\_\_\_

State &amp; Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

**II. Basis for Jurisdiction:**

Federal courts are courts of limited jurisdiction. Only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state and the amount in damages is more than \$75,000 is a diversity of citizenship case.

A. What is the basis for federal court jurisdiction? (check all that apply)

☒ Federal Questions☐ Diversity of CitizenshipB. If the basis for jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right is at issue? 4<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amend

C. If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?

Plaintiff(s) state(s) of citizenship \_\_\_\_\_

Defendant(s) state(s) of citizenship \_\_\_\_\_

**III. Statement of Claim:**

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events.

You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. Where did the events giving rise to your claim(s) occur? 109 E. 16<sup>th</sup> Street  
New York, New York

B. What date and approximate time did the events giving rise to your claim(s) occur? 11-12-2008

C. Facts: On 11-12-2008, defendant Leonardo Nimo, arrested the Plaintiff after Plaintiff was seen to have given another person a cigarette. At the time of arresting the Plaintiff, defendant NIMO knew that Plaintiff had not committed a criminal offense and arrested Plaintiff to cause Plaintiff to be prosecuted in an attempt to dissuade persons from selling illegal cigarettes. Defendant NIMO had previously arrested other persons in front of 109 E. 16<sup>th</sup> Street, NY, NY and was aware that Plaintiff would be prosecuted by the defendant CITY of New York, even though no evidence of a crime having been committed by Plaintiff. The defendant CITY of New York was aware from the criminal complaint that there was no evidence of a crime having been committed by Plaintiff. The defendant CITY of New York continued the unwarranted prosecution of the Plaintiff in an attempt to secure a guilty plea under its policy to vigorously prosecute all persons alleged to have sold illegal cigarettes. After refusing multiple plea offers from the defendant CITY of New York, the defendant CITY of New York dismissed the charges against Plaintiff.

#### IV. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. Suffered exacerbation of pre existing back injury

**V. Relief:**

State what you want the Court to do for you and the amount of monetary compensation, if any, you are seeking, and the basis for such compensation. To declare Plaintiff's Constitutionally protected rights were violated and to award Plaintiff \$1,000,000 in damages for the violation of his 4<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> amendment rights

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 19 day of December, 2013.

Signature of Plaintiff

[Signature]

Mailing Address

223 Ten Eyck walk, 1A  
Brooklyn, NY 11206

Telephone Number

(347) 981-5266

Fax Number (if you have one)

**Note:** All plaintiffs named in the caption of the complaint must date and sign the complaint. Prisoners must also provide their inmate numbers, present place of confinement, and address.

**For Prisoners:**

I declare under penalty of perjury that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:

Inmate Number